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No. 92-231

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1992

COMMUNITIES, INC., AND DULWORTH & RIVES, INC.,
PETITIONERS

v.

JAMES B. BUSEY, ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Aviation Administration properly approved the proposed expansion of the Standiford Field Airport in Louisville, Kentucky.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A4-A35) is reported at 956 F.2d 619. The record of decision of the Federal Aviation Administration (App., *infra*, 1a-52a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 1992. A petition for rehearing was denied on April 3, 1992. On June 30, 1992, Justice Stevens extended the time for filing a petition for a

writ of certiorari until August 1, 1992. The petition was filed on July 31, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

These consolidated cases arise out of a proposed expansion of the Standiford Field Airport in Louisville, Kentucky. On January 7, 1991, the Federal Aviation Administration (FAA) approved the expansion pursuant to the Federal Aviation Act of 1958, 49 U.S.C. app. 1301 *et seq.*, and Section 509 (b)(5) of the Airport and Airway Improvement Act of 1982, 49 U.S.C. app. 2208(b)(5). App., *infra*, 1a-52a. The court of appeals affirmed. Pet. App. A4-A35.

1. Standiford Field Airport is located in a developed area within the city limits of Louisville, Kentucky, with residential neighborhoods primarily to the north, industrial areas to the south, and various residential and commercial centers or strips to the east and west. For years, political, civic, and business leaders in the area have been concerned with increasing congestion at the airport. The problem has worsened in recent years, as the airport has been a national hub for United Parcel Service (UPS) since 1981. Forecasts prepared for the local airport authority indicated that the capacity of the airport would be exceeded during certain peak hours by 1992. Pet. App. A6-A7; App., *infra*, 6a; Schimpeler-Corradino Associates, *Evaluation of Airport Facility Needs at Standiford Field: Technical Report No. 1, Forecast of Aviation Activities* at vii (Jan. 5, 1988), C.A. App. 572.

The local airport authority developed about two dozen alternatives for improving the airport, includ-

ing a new airport site, and commissioned a detailed study of the five most promising. See Pet. App. A33. The study determined that the only feasible alternative (Alternative 5C) was to construct two new parallel north-south runways on the existing airport site. See Schimpeler-Corradino Associates, *Evaluation of Airport Facility Needs at Standiford Field: Final Report, a Strategy for Improvement* (June 1988) [hereinafter *Strategy for Improvement*], C.A. App. 515. An alternate plan (Alternative 3E) to build a north-south runway east of the existing runway 1-19, paired with a close-in parallel runway west of runway 1-19, was rejected because it was "the most expensive option, requiring numerous unique and difficult engineering solutions" and because of proximity to a neighboring Ford plant. *Strategy for Improvement*, *supra*, at 20, C.A. App. 542. Another alternate plan (Alternative 4) to build an east-west runway parallel to runway 11-29 was rejected "because the east-west parallel runway pairing would result in almost all flights passing over the noise-sensitive areas east and west of the airport. Additionally, the new runway would be too remote and too short * * *, and Jefferson County's only landfill would be closed," leaving the area without adequate waste disposal facilities. *Strategy for Improvement*, *supra*, at 20-21, C.A. App. 542-543. See generally Schimpeler-Corradino Associates, *Evaluation of Airport Facility Needs at Standiford Field: Technical Report No. 3, Selection of Preferred Alternative(s)* (Apr. 1988), C.A. App. 750. Accordingly, in 1988 the authority approved Alternative 5C, the plan to construct two new parallel north-south runways. See Pet. App. A8-A9.

2. The authority applied to the FAA for a grant to defray costs of the expansion.[1] Several federal statutes constrained the FAA's discretion to approve the application. First, pursuant to Section 509(b)(5) of the Airport and Airway Improvement Act of 1982, the Secretary cannot approve such an application if the project is

> found to have significant adverse effect [on natural resources] unless the Secretary shall render a finding, in writing, following a full and complete review, which shall be a matter of public record, that no feasible and prudent alternative exists and that all reasonable steps have been taken to minimize such adverse effect.

49 U.S.C. app. 2208(b)(5). Similarly, the Department of Transportation Act provides that the Secretary can approve a project that would "use * * * land of an historic site of national, State, or local significance * * * only if * * * there is no prudent and feasible alternative to using that land." 49 U.S.C. 303(c)(1). Finally, Section 102(2)(C)(i) of the National Environmental Policy Act of 1969 (NEPA) provides that "all agencies of the Federal Government shall * * * include in every recommendation or report on proposals for * * * major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on * * * the environmental impact of the proposed action." 42 U.S.C. 4332(2)(C)(i).

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[1] The FAA "is an administration in the Department of Transportation," 49 U.S.C. 106(a), headed by the Administrator of the FAA. The Administrator is obligated to carry out "duties and powers of the Secretary related to aviation safety (except those related to * * * hazardous materials)." 49 U.S.C. 106(g).

To determine whether the proposed expansion complied with these various statutory provisions, the FAA prepared an Environmental Impact Statement, which was completed in November 1990. See 55 Fed. Reg. 50,586 (1990) (notice of availability). The FAA agreed with the local authority's conclusion that Alternative 5C was "the only practical and feasible alternative, given the disadvantages of the other alternatives." *Department of Transportation, Federal Aviation Administration: Final Environmental Impact Statement, Standiford Field Airport, Louisville, Kentucky*, 3-17 (Nov. 1990) (EIS). It explained that "Alternative 3E would be extremely inefficient, pose severe engineering rquirements, and would not satisfactorily meet the forecast airside capacity need." *Ibid.* Similarly, the report concluded that "Alternative 4 would be extremely inefficient" for several reasons: it would result in almost all flights passing over noise-sensitive areas, require a second FAA tower, result in excessive taxi time for aircraft, because of the remoteness of the runway (more than four miles from the terminal), and would require closing the only landfill in the area. *Ibid.*

Another significant aspect of the EIS was analysis of increased noise that would result from the airport improvement project. In accordance with its customary practice, the FAA evaluated noise by use of a metric referred to as L_{dn}, which portrays the average day-night noise level, applying ten times the normal weight to noise between 10 p.m. and 7 a.m. The FAA operates in accordance with a federal, multi-agency determination that any level below 65 decibels is compatible with residential uses, so it draws a contour line surrounding the areas that would experience an L_{dn} level of greater than 65 decibels. At the request of the EPA (which developed

the L_{dn} methodology), the FAA also agreed to include in the EIS Single Event Level noise data, which show the volume of noise events. Pet. App. A16-A18; EIS 5-154 to 5-155.

On January 7, 1991, the FAA issued a Record of Decision, formally approving the project and federal funding of the Louisville Project. App., *infra*, 1a-52a. The decision reiterated the conclusion of the EIS that Alternative 5C was "the only practical and feasible expansion alternative." *Id.* at 10a; see *id.* at 48a (emphasis omitted) ("[t]here is no feasible and prudent alternative to the location of the airport and runways and all reasonable steps have been taken to minimize adverse effects"). The FAA noted that noise resulting from the project would affect historical sites in the area, but concluded that "planning has been incorporated in the project to minimize or mitigate the impacts, * * * and * * * there is no feasible and prudent alternative * * * that would provide greater relief (except closing Standiford Field)." *Id.* at 34a.

3. Petitioners commenced two proceedings challenging the FAA's action, a petition for review in the Sixth Circuit, and an action in the United States District Court for the Western District of Kentucky, which was transferred to the Sixth Circuit pursuant to 28 U.S.C. 1631. Petitioners contended that the approval was inconsistent with NEPA; 49 U.S.C. 303(c); and 49 U.S.C. app. 2208(b)(5). The court of appeals rejected petitioners' contentions and affirmed the FAA's decision in its entirety. Pet. App. A4-A35.

a. First, the court of appeals rejected petitioners' contention that the FAA improperly failed to consider whether historical sites outside the 65 decibel L_{dn} contour would be "used" by the project because of

increased noise levels at those sites. Pet. App. A16-A27. The court noted that it should uphold the FAA's decision unless it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *id.* at A18 (quoting 5 U.S.C. 706(2)(A)), and that other circuits already had rejected similar challenges to the FAA's use of the L_{dn} methodology, Pet. App. A19-A21 (citing cases). In light of the record before it, the court concluded that "there is no basis for holding that the FAA's noise analysis was an abuse of discretion." *Id.* at A22. Accordingly, the court agreed with the FAA's conclusion that the project would not use historical resources located outside the 65 L_{dn} contour. *Ibid.*

b. The court also rejected petitioners' claims that the FAA violated NEPA by failing to give sufficient consideration to the effect of its decision on hazardous wastes and transportation. Pet. App. A27-A30. With respect to the hazardous waste point, petitioners contended that the FAA failed to develop an adequate mitigation plan. The court disposed of this claim by reference to this Court's decision in *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332 (1989), which held that NEPA does not require an agency to present a fully developed mitigation plan before making a decision. Pet. App. A27-A28. Examining the agency's consideration of these issues, the court concluded that the EIS demonstrated "precisely the type of analysis explicitly approved of in *Robertson*—identification and discussion of various potential measures to mitigate the environmental impact of the [project]." *Id.* at A28. With respect to the transportation issue, the court concluded that it was appropriate for the FAA to defer analysis of the possible impact on transportation that might occur if a certain road were reconstructed, given that the

reconstruction would not occur for at least ten years. *Id.* at A29-A30.

c. The court also rejected petitioners' contention that the FAA failed to give adequate consideration to the proposed acquisition and destruction of the Standiford, Prestonia, and Highland Park neighborhoods.[2] Pet. App. A30-A32. The court noted that the land acquisition program was "fully discussed" in the EIS and the Record of Decision, *id.* at A31, and concluded that the FAA performed a suitable environmental analysis, *id.* at A32.

d. Finally, the court concluded that the Agency's analysis of alternative configurations to the Airport Improvement Project was reasonable. Pet. App. A32-A35. The court noted that the local airport authority had considered about two dozen alternatives, and had pared them down to five, of which it had conducted a detailed study, *id.* at A33, and that the EIS included a "thorough discussion" of each of those five alternatives, as well as "an explanation of why the alternative was either imprudent or infeasible." *Id.* at A34. Characterizing the record as "replete with extensive documentation of a very detailed evaluation," the court concluded that the FAA "reasonably rejected several of the alternatives that presented severe

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[2] Based on the view that excessive noise was incompatible with the residential nature of these neighborhoods, local authorities adopted ordinances to relocate residents from these areas. Petitioners challenged this action in the state courts, securing a holding from the Kentucky Supreme Court that the ordinances were unconstitutional. See *Prestonia Area Neighborhood Ass'n* v. *Abramson*, 797 S.W.2d 708 (Ky. 1990). Since that time, the airport authority has proceeded to acquire the properties under other statutory authority. See Pet. App. A14-A16.

engineering requirements," and also found the others to be "imprudent for reasons including their high cost, safety hazards, operational difficulties, and disruptions to landfills and noise-sensitive areas." *Id.* at A34-A35. In sum, the court concluded, petitioners' challenge to the review process "ignore[s] the enormous record evidence on feasibility." *Id.* at A35.

ARGUMENT

1. Petitioners first contend that the court of appeals erred in not overturning the Secretary's decision that the project was the only "prudent and feasible alternative," 49 U.S.C. 303(c)(1); they argue that the Secretary instead should have approved Alternatives 4 and 3E. Pet. 13-38. This claim does not warrant review, however, because the court of appeals correctly upheld the agency's decision; moreover, petitioners offer no substantial reason to believe that the question whether the Secretary properly evaluated the alternatives in this case raises any legal issue of general significance.

a. As this Court has explained, the Secretary may accept an alternative that uses protected resources if he "find[s] * * * as a matter of sound engineering it would not be feasible to build the [project] along any other route," or if other alternatives present "unique problems" or cause extraordinary costs or community disruption. *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402, 411, 413 (1971). As the court of appeals noted, "the administrative record is replete with extensive documentation of a very detailed evaluation," which "fully explain[s]" "[t]he reasons for deeming the other alternatives infeasible." Pet. App. A34. First, the Secretary's review of Alternative 3E concluded

that it would be "extremely inefficient, pose severe engineering requirements, and would not satisfactorily meet the forecast airside capacity need." EIS 3-17. As the Environmental Impact Statement explained, the "[i]ncrease in airfield capacity [under this alternative would be] insufficient to meet forecast needs for aircraft arrivals." *Ibid.* Similarly, the Secretary agreed that Alternative 4 was infeasible. *Ibid.* It would have created a single new runway far from the main terminal and at a great distance from the UPS terminal, which would require the use of a second FAA tower to control operations. Equally important, it would have required closure of the only landfill facility serving Louisville and Jefferson County and five surrounding counties. See *ibid.* The Secretary reasonably determined that creating an alternative landfill would pose problems of prohibitive dimensions.

Petitioners argue at length (Pet. 17-21) that the Secretary was required to select the alternatives they prefer, based on their contention that the record contains no evidence that those alternatives would have used any protected resources. The problem with this argument, of course, is that the statute does not require the Secretary to select *any* alternative that does not use protected resources; it requires him only to select "prudent and feasible" alternatives. Because the Secretary properly determined that the alternatives petitioners prefer were not prudent and feasible, he correctly rejected them.

b. Petitioners also contend (Pet. 32-38) that the decision of the court of appeals reflects less careful review of the Secretary's decision than the review evidenced by various decisions of other courts of appeals. We disagree. None of the cases cited by

petitioners supports this contention. First, three of the cases actually *upheld* the Secretary's determinations. See *Citizens Against Burlington, Inc.* v. *Busey*, 938 F.2d 190, 203-204 (D.C. Cir.) (Thomas, J.) (determination that alternatives were imprudent), cert. denied, 112 S. Ct. 616 (1991); *Allison* v. *Department of Transportation*, 908 F.2d 1024 (D.C. Cir. 1990) (determination that noise from a project would not "use" protected resources); *Sierra Club* v. *Department of Transportation*, 753 F.2d 120 (D.C. Cir. 1985) (same). Second, *Citizen Advocates for Responsible Expansion, Inc.* v. *Dole*, 770 F.2d 423, 441-442 (5th Cir. 1985), rejected the Secretary's determination that the project would not "use" certain properties; it did not address the standard for determining whether alternatives are feasible and prudent. In the remaining cases, the courts did decide, on the records before them, that the Secretary erred in determining that other alternatives were not feasible and prudent. See *Druid Hills Civic Association* v. *Federal Highway Administration*, 772 F.2d 700, 716-718 (11th Cir. 1985) (rejecting determination that rested on "generalized and often contradictory attention" to the issue), cert. denied, 488 U.S. 819 (1988); *Stop H-3 Association* v. *Dole*, 740 F.2d 1442, 1450-1458 (9th Cir. 1984) (rejecting determination where Secretary "could not have reasonably believed" that there was no feasible and prudent alternative), cert. denied, 471 U.S. 1108 (1985). But the only substantiation petitioners can offer for their contention that the court of appeals applied a different standard in reviewing the record in this case is that the court of appeals concluded that the Secretary did not err. Given the deferential standard of review, and the defects in the administrative records at issue in *Druid Hills* and *Stop H-3*, that contention does not show disagreement

among the courts of appeals concerning the governing legal standard and thus does not justify review by this Court.

2. Petitioners also argue (Pet. 39-44) that the Court should grant review to resolve an alleged conflict in the circuits regarding the propriety of rejecting all alternatives that do not satisfy the transportation needs of the proposed project. In their view, the Secretary's decision to reject the "no-action alternative was improper because it rested on nothing more than the determination that the no-action alternative would not satisfy the transportation needs of the project. This argument ignores the Secretary's detailed consideration of the need for airport improvement. First, as the Record of Decision reflects, the Secretary considered whether the needs of the community could be met by rail or other modes of travel. In light of the nature of UPS's operations, the Secretary reasonably concluded that only an increase in airport capacity would accommodate UPS's needs. App., *infra*, 8a-9a. Similarly, the Environmental Impact Statement concluded that the need for increased capacity was so serious that the no-action alternative "would have continuing detrimental effects on the local and regional economy." EIS 3-1.[3]

Petitioners err in asserting (Pet. 40-41) that the decision of the court of appeals[4] conflicts with the

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[3] Petitioners suggest in their statement of the case (Pet. 5-8) that airport use since the time of the Secretary's decision indicates that the Secretary erred in evaluating the need for the project. That type of post-decision, non-record, evidence, however, has no relevance to the merits of the decision, which necessarily rested on evidence available at that time.

[4] It is not surprising that the court of appeals did not expressly address this point, because it was not presented as a

decision of the Ninth Circuit in *Stop H-3 Association* v. *Dole*, 740 F.2d 1442 (1984), cert. denied, 471 U.S. 1108 (1985). The *Stop H-3* court did not hold that the Secretary is barred from considering transportation needs in determining whether a project should be constructed; such a holding would vitiate the very purpose of the statute. Instead, the court "merely h[e]ld that the record before [it] d[id] not demonstrate that the stringent requirements of section 4(f) have been satisfied" with respect to the determination that the no-action alternative would be an imprudent alternative to the construction of a highway. *Id.* at 1458. As with petitioners' prior claim, there is no reason to believe that the court of appeals' fact-specific decision on this point shows judicial disagreement on the governing legal standards or otherwise raises a question of general legal significance.

Petitioners suggest that the Eleventh Circuit's decision in *Druid Hills* recognized a conflict between the law of the Eleventh Circuit on this issue—which would allow rejection of an alternative simply because it would not meet the needs a project was designed to meet—and the law of the Ninth Circuit established in *Stop H-3*, which requires an additional finding that the need for the project is sufficiently substantial to justify use of the historical resources. See Pet. 43 (citing *Druid Hills*, 772 F.2d at 715-716 n.18). As we explain above, the Secretary's decision in this case did not merely assume that the no-build alternative was inadequate; it rested on a considered determination that the project was vital to the region's economy.

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separate argument in the court of appeals, and received only cursory treatment in petitioners' briefs in that court. See Pet. C.A. Br. 18; Pet. C.A. Reply Br. 19.

Accordingly, this case apparently would have been decided in the same way even under the Ninth Circuit's view of the law. Hence, even if the issue had been properly presented and decided, this case would not provide an appropriate vehicle to consider the conflict noted in *Druid Hills*.

3. Finally, petitioners contend (Pet. 44-62) that the Secretary's decision violated NEPA.[5] Petitioners do not identify any specific legal question raised by the decision; rather, they simply suggest that the Secretary's determination is not adequately supported by the record. Accordingly, there is no reason to believe that this contention raises a legal question of general significance. In any event, petitioners' specific criticisms of the record are meritless.

a. First, petitioners argue (Pet. 54-58) that the Secretary's analysis was "fundamentally skewed" because of its reliance on the assumption that the Highland Park and Standiford neighborhoods would be condemned even under the no-action alternative. This contention is not supported by the record. As the court of appeals explained,

> the [local] governments * * * have been and remain committed to removing certain residential properties from the three neighborhoods near [Standiford Field] that are currently heavily impacted by aircraft noise. They have demonstrated that commitment by moving ahead with a land acquisition program—using strictly local money—long before there was any assurance that the airport project would, or could, be built.

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[5] To the extent petitioners' NEPA contention is based on petitioners' erroneous substantive claims (see Pet. 60-61), it is answered by the foregoing discussion.

Pet. App. A31; see EIS Addendum No. 1, at 1 ("the relocation of incompatible uses (homes, churches, neighborhood businesses) * * * is not dependent or contingent upon the [project]"); EIS 1-9 ("Urban Renewal Plans have been adopted and are being pursued independently by the City of Louisville and Jefferson County in four adjacent neighborhoods."). Because petitioners' contention on this point rests on the assumption that the Secretary and the court of appeals both erred in reaching this factual conclusion, there is no reason for this Court to grant review. See *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491 (1951) (this Court rarely will review court of appeals determinations upholding agency findings); cf. *Tiffany Fine Arts, Inc.* v. *United States*, 469 U.S. 310, 317 n.5 (1985) (factual questions upon which lower courts agree generally are not suitable for review by this Court). In any event, as the court of appeals noted, the program "is fully discussed in the [EIS], just as the [Kentucky judicial decision regarding the program] is fully discussed in the [Record of Decision]." Pet. App. A31; see App., *infra*, 38a-46a (discussing the condemnation program).

b. Petitioners also argue (Pet. 58-59) that the Secretary should be required to issue a Supplemental Environmental Impact Statement giving further consideration to single-event noise data that are not relevant under the FAA's L_{dn} methodology. This argument, however, can have merit only if it were improper for the FAA to rely on its expert conclusion that the L_{dn} methodology is an appropriate tool for measuring the effects of airport noise. In light of the court of appeals' conclusion that the FAA's methodology complies with applicable statutory re-

quirements, see Pet. App. A16-A27, and petitioners' determination not to press that issue in this Court, see Pet. 59, petitioners' argument regarding consideration of the single-event data is beside the point and thus does not merit review.[6]

c. Finally, petitioners argue (Pet. 61-62) that the Secretary did not adequately consider the impact of the project on transportation, because he did not consider the effect a permanent closure of Crittenden Drive would have on transportation in the area. The EIS correctly noted that the road would be closed for at least ten years and it thoroughly discussed the expected dislocation the closure would cause. EIS 5-67. The EIS also stated that the Secretary would defer examination of the environmental impact of any relocation of the road until plans for relocation were developed. *Id.* at 1-10. As the court of appeals concluded (Pet. App. A29-A30), this approach is entirely reasonable.

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[6] In any event, as the court noted (Pet. App. A21), the FAA did analyze the single-event data in this case, so there would be little or no reason for a Supplemental Environmental Impact Statement even under petitioners' view of the appropriate methodology.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1992

APPENDIX

RECORD OF DECISION

FOR

PROPOSED TWO NEW PARALLEL RUNWAYS
AND ASSOCIATED WORK

AT

STANDIFORD FIELD
LOUISVILLE, KENTUCKY

Date: January 7, 1991

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
SOUTHERN REGION
ATLANTA, GEORGIA

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Department of Transportation
Federal Aviation Administration
Record of Decision

Proposed Two New Parallel Runways and
Associated Work
Standiford Field
Louisville, Kentucky

I. PROPOSED PROJECT:

The proposed project (commonly referred to as the "Louisville Airport Improvement Program" or "LAIP") involves construction and operation of two new parallel north-south runways including full length parallel taxiways and installation of Category III Instrument Landing Systems (ILS) for the south ends of the runways and Category I ILS's on the north ends. The project also involves various associated items including runway and taxiway lighting, land acquisition. road relocations, relocation of the Airport Traffic Control Tower (ATCT), and construction of a new aircraft rescue and fire fighting facility.

The Regional Airport Authority of Louisville and Jefferson County, Kentucky (RAA) has submitted an environmental assessment covering the proposed project together with an appropriately reviewed Airport Layout Plan (ALP) and a preapplication for federal assistance in the amount of $224 million.

The project is needed to enhance the capacity of the national system of airports which is currently one of the most critical issues in the aviation industry and to meet current and forecasted air passenger and cargo demands at Standiford Field (SDF).

II. FEDERAL ACTIONS REQUIRED TO IMPLEMENT THE PROPOSED PROJECT:

The major Federal Aviation Administration (FAA) actions are approval of an Airport Layout Plan and approval to provide federal funding for eligible airport development projects. Major federal actions also include issuance of a 404 permit by the U.S. Army Corps of Engineers (the Corps).

Specific dependent elements of the FAA approval actions include:

Determination of effects upon safe and efficient utilization of air space.

Determination of conformance with FAA design criteria and approval of construction plans and specifications.

Implications concerning Federal Grant Agreements with consideration of the provisions of Federal Aviation Regulations (FAR, Parts 77, 150, 157, and 169).

Approval of revised Airport Certification Manual (FAR, Part 139).

Approval of revised Airport Security Plan (FAR, Part 107).

Relocation and upgrading the existing Airport Traffic Control Tower and Terminal Radar Approach Control (TRACON) facility.

Relocation of:

* Airport surveillance radar (ASR);

* Instrument landing system, runway visual range (RVR), and associated visual navigation aids (NAVAIDS) on Runway 1/19 to the new Runway 17R/35L;

* Remote receiver facilities;

* Airway Facilities Sector Field Office; and

* FAA power and control cables serving the airport facilities.

Establishment of new ILS's, Distance Measuring Equipment (DME), RVR, and approach lighting systems (ALS's) for the new Runway 17L/35R.

Establishment of new flight procedures, including visual and instrument procedures, missed approach procedures, and departure procedures of each new runway (FAR, Part 95); cancellation of existing procedures upon closure of Runway 1/19.

Development of FAA facility procedures for departure headings, simultaneous approaches, air traffic procedures and position responsibilities.

FAA Air Traffic Controller training for new scheme of airport operations, including new simultaneous approach procedures and facilities and modified position responsibilities.

Development of new FAA video map for new runway and airspace.

Planning for new FAA facilities (ATCT & TRACON) to include types of equipment, layout, additional radar scopes, and radio equipment for monitor positions.

Maintenance of close coordination with RAA and appropriate FAA program offices, as required, for safety during construction and runway closures.

Approval of the Environmental Impact Statement (EIS).

III. PURPOSE:

The FAA supports the objectives of the proposed project as being justified and needed based on air transportation system capacity and aeronautical demand at Standiford Field. System capacity is one of the major issues facing aviation in the United States today. SDF ranks 75th on the FAA list of top 100 airports based on 1989 passenger enplanements.

Standiford Field is also a cargo hub for the United Parcel Service (UPS) small package services which is a real growth area in the air cargo industry. One indication of the magnitude of the small package market is shown by the shipment data reported to the Air Transportation Association. According to the data reported for 1989, 15 carriers transported a total of 409 million packages, which is a 16.9 percent increase over the previous year. This represents $6.7 billion in revenues. UPS's growth and commitment at Standiford Field can be measured by the multimillion dollar facility presently being constructed for its operation.

The National Transportation Policy Strategies for Action published by the Department of Transportation in February 1990 lists six key themes in its planned agenda to fulfill short and long term needs. The first theme listed is "maintain and expand the nation's transportation system."

The capacity at SDF will be exceeded in some important, peak afternoon and evening hours by 1992.

The purpose of the project is to enhance the capacity of the national system of airports as well as meeting current and forecasted air passenger and cargo demands at SDF.

The existing airport configuration permits 26 TFR arrivals per hour and this capacity is currently being exceeded on a frequent basis. By 1992, Instrument Flight Rules (IFR) arrival capacity will be exceeded daily between 11:00 p.m. and 1:00 a.m. IFR conditions occur eight percent of the time (approximately one month per year).

Thirty Visual Flight Rules (VFR) and IFR departures can be accommodated daily. This capacity will be reached or exceeded at 1:00 a.m. to 2:00 a.m. and 4:00 p.m. to 5:00 p.m. by 1992.

Capacity constraints will initially impact the UPS operation most severely because Louisville is the central distribution point for the Next Day and Second Day Air Delivery service and there is little flexibility in this type of operation. As the airport activity level increases, the delays will become more pronounced and widespread. The FAA concludes that the system capacity increases needed to fill this demand should be accomplished at SDF. The air transportation service is very important to Louisville and its economy as well as the national air transportation system. RAA and FAA have already invested significant effort and moneys into the facilities at the airport.

IV. ALTERNATIVES:

In determining the best solution for the SDF capacity problems, the following alternatives were considered:

No action.
New Site/New Airport.
Service from Other Airports.
Alternative Modes.
Improvement/Expansion of Existing Airport.

Analysis of each of the available alternatives indicates that the two viable alternatives are "no action" and the proposed project. While the FAA recognizes that detailed, in-depth consideration is being given to only two alternatives, consideration has been given to other feasible alternatives to the extent that they were reasonable and viable. Alternative modes alternate is being rejected on the basis of high cost of automobile and bus transportation for distances over 250 miles particularly in the case of business travel due to the time element. Rail transportation is being rejected on the basis that there is no rail passenger service at Louisville as well as the fact that it could not provide the nationwide overnight package service provided by the air cargo operations at SDF. The FAA has also considered the alternative of the UPS central "hub" operations being located at an airport other than SDF. UPS statements communicated to the RAA and FAA throughout the process of developing the proposed project do not indicate any corporate disposition to such an alternative. While the FAA does not control UPS corporate decisionmaking and should not interfere with its business choices, it is recognized that proceeding with the "no action" alternative could well be a factor in its future conduct of business at SDF and potentially elsewhere. However, in light of the expressed commitments of UPS to its continuing presence at SDF to the extent the airport facilities permit, and the absence of any dis-

cernable indication of the likelihood of a change in its intentions, the FAA believes it would be an unproductive and unnecessary exercise to engage itself in protracted speculation of what might be the case "if" or when UPS altered its declared course in its commercial enterprises as they are constituted and projected at SDF. It has and continues to make substantial economic and capital investment in its Louisville facilities. The central issue is whether airport improvements should be accomplished at SDF to provide increased capacity to meet the demands for UPS and passenger service.

For years political, civic, and business leaders in the Louisville area have been concerned with the growing lack of adequate air transportation service and facilities to attract that service. An inquiry into the siting and construction of a new, larger airport to serve Louisville and surrounding areas has a long history. Preliminary work began as far back as the early 1970's when, as discussed at length in the Final Environmental Impact Statement (FEIS), numerous sites were studied to determine the ones most acceptable from a number of competing objectives. An extensive FAA funded site/environmental study was conducted as part of the planning. Eventually after a lengthy process, the planning for a new airport, even at the identified preferred site, was abandoned. This was due largely to the high costs, the lack of a responsible sponsor for the airport site, as well as the lack of state and local political, institutional, and public support for the project. The new airport proposal had also met the opposition of the Governor.

The more recent efforts to improve and develop air transportation in the Louisville area, revisited those

prior studies and built upon them. Based on the updated study, it is evident and clear that there remains no viable support for constructing a new airport at any of the proposed alternative sites. The environmental problems associated with such a project today would be considerable. There remains no state or local political or public support for a new airport site; there is no responsible operator/sponsor for a new airport. Absent any practical viability for considering a new airport at a different site, a realistic assessment of the local situation indicates that the choices presented to the FAA are effectively limited to the issues of improving or not improving the Louisville airport and utilizing essentially its existing site.

Thus, it is important that RAA have built into its proposed project many features designed to avoid airport design and operation problems as well as being designed with a great deal of sensitivity to the airport environment. Five separate alternatives for expansion of the existing airport were initially developed, evaluated, and considered in selecting the proposed configuration of the project as the most practical and feasible. The "preferred" alternative, subsequently, was further modified to realign the runways when, in response to public input, it was found that it would improve the project and mitigate several of the problems that had been identified.

Five different alternatives for expansion of the existing airport were considered and evaluated before selecting the proposed project as the only practical and feasible expansion alternative. The FAA also evaluated an additional runway alignment suggested during the comment period and found it unacceptable.

The possibility of altering the alignment of the west runway was examined. The flight track could be moved about 1,000 feet to the west of Central Park by rotating the south end of the west runway to the east. The separation criteria for parallel runways operating simultaneously and independently under IFR conditions could be satisfied. Parallelism of ±2.5 degrees must be maintained to achieve the capacity increase necessary. Some benefit for Old Louisville could be obtained. However, the benefits would be outweighed by additional relocation requirements, project delay, and increased noise impacts to other portions of the community.

Based on reasons discussed in Section 3 of the FEIS and summarized above, as well as the fact that the airport authority and other state and local governmental entities were committed to the proposed project through bonds and state legislation authorizing state funding for the project, the FAA has concluded that there are only two reasonable alternatives relative to the decisionmaking process in this situation. These alternatives are: (1) the proposed project, and (2) the no action alternative. The proposed project is the preferred and environmentally preferred alternative. A demand on the air transportation services, including cargo and package service, will continue to increase at SDF with or without the project; with the project, improvements can be made which will satisfy that demand and, at the same time, accomplish significant improvements in the compatibility of the airport to its surrounding community by environmental enhancements and mitigation built into the project and related activities.

V. FAA INVOLVEMENT

The FAA has been fully involved in the project processes, Representatives participated in the initial prescoping meeting for the environmental assessment (EA) on October 10, 1988, and the public hearings on August 31, 1989, in addition to numerous other meetings. The FAA also reviewed the EA and accepted the document on January 9, 1990. This document was systematically examined for conformance with FAA procedures and was found to be properly prepared and addressed the environmental impacts sufficiently to proceed with a DEIS. During this process, RAA responded to numerous requests from FAA for adidtional information and material to validate various data. It was also revised as a result of comments received during the public hearing process. The FAA then conducted a scoping process based on the EA. The *Federal Register* Notice of Intent to prepare a DEIS was published on January 26, 1990. Based on FAA review and comments received through the scoping process, the DEIS was prepared and submitted for federal review and public comment. The notice of availability of the DEIS appeared in the *Federal Register* of May 25, 1990. The comment period ended July 9, 1990.

Above and beyond, but in light of, the environmental process, the FAA is making the following determinations, based on its application of applicable FAA standards, criterion, and guidelines:

> Straight-in approach procedures can be established for each end of each runway (RWY's 17L/35R and 17R/35L). The procedures will be

aligned relative to the extended runway centerlines (approximately 165 degree/345 degree).

A precision Instrument Landing System (ILS) with Distance Measuring Equipment (DME); Medium Intensity Approach Lighting System with Sequenced Flashing Lights (MALSF), Runway Visual Range (RVR), Touchdown Zone Lighting (TDZ), and Runway Centerline Lighting will provide category I approach capability to RWY's 17L and 17R. Expected landing minimum is 200 feet above touch down and RVR 1800 feet visibility. When TDZ and runway centerline lighting is not available, the RVR visibility minimum would be 2400′.

A precision ILS with DME, High Intensity Approach Lighting System with sequenced flashing lights (ALS-2), RVR, TDZ and Runway Centerline lighting will provide category I/II/III capability with a landing minima of RVR 600 feet visibility for RWY's 35L and 35R. Taxiway centerline lighting would reduce the minima to RVR 300′ visibility.

The configuration will also provide non-precision localizer approaches with an approach minimum descent altitude of 250 feet above the highest obstacle in the final approach segment and an RVR minima of 5000′ visibility.

The ILS glide slope will be set at three degrees. Approaching aircraft will not fly at an altitude lower than the three degree slope. The exact location of the glide slope facility will be determined in the detailed planning process.

The ALS land for each runway extends 2400 feet from the runway threshold along the extended runway centerline. The obstacle clearance area is 200′ beyond the last light station. The obstruction plane is at or below a 50:1 slope. No objects may penetrate the light lane plane. All land and clear areas necessary for the protection of FAA facilities must be provided by the RAA.

The ILS final approach obstacle clearance surface primary areas and its wide transitional surfaces are described in FAA Order 8260.3B, TERMINAL INSTRUMENT PROCEDURES (TERPS) HANDBOOK, and FAA Order 8260.36, CIVIL UTILIZATION OF MICROWAVE LANDING SYSTEM (MLS). The three degree glide slope requires a 34:1 obstacle clearance slope for the inner section (10,000′) and a 29.5:1 obstacle clearance in the outer section (40,000′). Each side transitional obstacles clearance surface is 7:1. These "imaginary" surfaces apply to each new runway approach end.

Category II, ILS touchdown area, missed approach area and side transitional obstacle clearance surfaces (in accordance with Advisory Circular 120-29) will apply to approach runway ends of RWY's 35L and 35R. This is in addition to the Category I ILS approach obstacle clearance slopes. These surfaces must not be penetrated by obstacles.

Locator Outer Marker (LOM) sites may not be available in the built up metropolitan area. Therefore, Distance Measuring Equipment

(DME) must be installed at each localizer as a substitute. DME fix error (±.5 nm) will apply to required fixes and obstacle clearances.

Radar vectors to straight-in approaches will be the rule, but procedure turn (PT) capability will be provided as a back-up with each instrument approach. Procedure turns may be designed on the east side of the approach course for RWY's 17L and 35R and on the left side for RWY's 17R and 35L. An accommodation with special airspace R-3704 A/B will be necessary for procedure turn to RWY 35L. If not possible, no procedure turn will be authorized for that approach and radar vectors will be required.

The instrument approach Category D (2.3 nm radius) Circling Area for the airport must be enlarged commensurate with the geographical enlargement of the runway's layout.

Existing RWY 1/19 will be closed after completion of RWY's 17R and 35L. Its facilities (ILS, RVR, approach lighting) would be expected to be relocated to proposed new RWY 17R/35L. Existing RWY 1/19 instrument approach procedures, missed aproach procedures, and departure procedures would be cancelled.

Runway 11/29 will remain open. However, no usable site for RWY 29 glide slope antenna will be available after commissioning of RWY 17L/35R occurs. Therefore, precision ILS approaches to RWY 29 will be cancelled and the glide slope removed from service. Localizer RWY 29 non-precision approach will remain usable only when taxiing aircraft are held outside the localizer

critical area. The critical area would be penetrated by aircraft using new RWY 17R/35L and its associated parallel taxiways). Therefore, usage of RWY 29 for landings would probably be extremely limited. Runway 11 will retain a VFR landing usage role. In the event a decision is made to retain the GS on RWY 29, this will preclude achieving CAT III minimums on RWY 35R. Additionally, it will restrict CAT III minimums to a decision height of 150 feet and visibility to 1600 RVR. This would result in a limited net gain of only a 50 foot reduction in decision height and 200 foot reduction in RVR visibility versus CAT I minimums.

For noise analysis purposes, the CAT III operations were split evenly between the two parallel RWY's. If CAT III cannot be achieved for the east RWY, then all CAT III operations must be diverted to the west RWY. FAA records indicate that only six days per year have CAT III weather conditions varying from .5 to 4 hours in duration. Because of the limited time frame of CAT III conditions, the CAT III operations were insignificant insofar as an impact on the noise analysis. Therefore, a decision to limit RWY 17L/35R to CAT I operations will not impact the noise analysis.

Missed approach procedures to proposed RWY 17R/35L would be expected to utilize the missed approach procedure currently existing for RWY 1/19, which turns west to DAMEN holding fix. New missed approach procedures for RWY 17L/35R must be developed with a turn to the east

probably to Louisville (IIU) VORTAC holding fix.

Controls for existing taxiways at the approach end of proposed RWY 17L must be redesigned to preclude aircraft taxiing through ILS obstacle clearance slope surfaces (including the side transitional slope).

The Airport Layout Plan (ALP) was submitted by RAA in preliminary form on 11/16/89, 12/19/89, 3/27/90, and 8/14/90. Formal FAA comments were transmitted to RAA on 1/2/90, 2/22/90, 5/30/90, and 9/14/90, respectively FAA review was based on compliance with FAA airport planning and design criteria standards and the layout has been determined to be safe and efficient utilization of airspace. The document would be technically acceptable for FAA approval upon an acceptable environmental finding.

Runway centerline to centerline separation exceeds 4300 feet which is the minimum requirement for simultaneous approaches under instrument flight rules. Parallel taxiways accompany each new runway. Separation from runway centerline to taxiway centerline is 450 feet and is acceptable.

Separation standards in accordance with Advisory Circular 150/5300-13 dated September 29, 1989, were applied to ensure the aircraft characteristics relating to aircraft approach category D and Airplane Design Group V were accommodated on the airfield's geometric layout.

Pavement strength will accommodate the following landing gear configurations:

Single Wheel (lbs.)	75,000
Dual Wheel (lbs.)	170,000
Dual Tandem (lbs.)	360,000

The layout of the runway safety areas are of the appropriate dimension to accommodate the design group D-V aircraft.

Runway object free areas on the new runways meet the standard length and width requirements for design group D-V aircraft with precision approaches.

All runway protection zones meet the appropriate standard dimensional requirements for precision instrument runways.

Runway lenghts identified provide the following usable runway surface:

17L-35R 7,800′×150′
17R-35L 10,000′×150′

The runway lengths have been determined needed for the proposed project.

Existing RWY 11-29 will remain in operation throughout the construction phrase and continue to operate thereafter. The safety and object free areas on RWY 11-29 were revised to incorporate the latest version of FAA design standards. The declared distance concept, as addressed in FAA Design Standards Advisory Circular AC 150/5300-13, was utilized. Runway 1-19 will be closed after the two new parallel runways are constructed.

The ALP was reviewed by the Memphis Airports District Office (ADO) and coordinated with the Air Traffic Division, Flight Standards Division, Airway Facilities Division and the Civil Aviation Security Division. The ALP documents are located in the Memphis ADO and include a narrative report and the following drawings:

Airport Layout Drawing (1990, 1993, 1995)
Airport Airspace Drawing (1995)
Runway Protection Zone Drawing (4 sheets)
Terminal Area Drawing (1995)
Land Use Drawing (1995)
Airport Property Map (1995)
Wind Rose and Data Table

The Airport Airspace drawing defines FAR Part 77 surfaces. Existing obstructions penetrating Part 77 surfaces are identified with recommended actions to remove, relocate or light the object.

The Land Use Drawing identifies the allocation of land needed to complete the airport development. Land uses compatible to the airport under Part 150 criteria, are identified.

The Airport Property Map Drawing identifies existing and proposed property lines.

The landfill issue (discussed in the FEIS) was reviewed. First, the proximity of Standiford Field to the landfill has not resulted in problems in the past, and there is no expectation of problems in the future based on the RAA's continuing commitment to its strategic plan for wildlife hazard management, discussed below. Second, there must necessarily be the presumption that

a potential hazard exists, merely by the fact that landfills do attract birds. This issue has been given appropriate and extensive consideration during development of the proposed expansion of Standiford Field. Specifically, the RAA, within the framework of the environmental assessment process for the proposed project, sponsored a fourteen-month survey of bird activity at the landfill and in the airport environs. The survey was managed by the Animal Damage Control (ADC) Branch of the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). The completed survey and the analysis of findings are documented in the Environmental Impact Statement. The RAA, in cooperation with USDA/APHIS-ADC, was able to define a permanent, long-term program to maximize air operations safety relative to birds and other wildlife.

Formulation and adoption of a Strategic Plan for Wildlife Hazard management and an Annual Work Plan, which are part of the results of the USDA/APHIS-ADC study, are intended to provide the framework for implementing the wildlife hazard management program to which the RAA represents it is committed.

Originally, it was contemplated that formulation of a wildlife hazard management function would occur only with implementation of the LAIP. However, the RAA has determined that such a function would be useful and beneficial within the current context of airfield operation. The control program already has been incorporated in the Airport's Certification Manual, upon re-

view by the FAA; it became effective July 1, 1990.

Finally, the FAA has concluded that the landfill cannot be closed and that airport expansion projects have placed an existing landfill that previously met FAA minimum separation standards into a noncomplying position. Based on the FAA's continuing commitment to its wildlife hazard management plan, the FAA has determined that wildlife hazard potentials can be effectively controlled. This decision in no way reflects a change in agency policy that landfills should not be established or expanded within the criteria contained in FAA Order 5200.5A.

During discussions with the airport owner's representatives, the FAA realized that they had assumed simultaneous straight-out departures on the new runways. FAA Order 7110.65 requires departure courses to diverge by at least 15 degrees for simultaneous operations unless there is acceptable use of visual separation. That could not be estiblished for SDF straight-out departures when weather conditions are less than 2,500-foot ceiling and visibility 5 miles. At other times, the 15 degree course separation will apply, thereby permitting full departure capacity at all times.

The FAA was also concerned about the effects of Restricted Area R-3704 (associated with Ft. Knox) on the ability of the controllers to vector arrival traffic to the Runway 35L final approach course. Negotiations with the U.S. Army have resulted in an agreement to restructure R-3704

vertically. Although the level of activity will remain the same as in the past, this restructure will assist the Standiford tower in vectoring traffic to/from the proposed runways. The lateral boundaries of R-3704 will remain as they are now but will limit the controller to vectoring only one aircraft at a time from the west to the final approach course of Runway 35L. This will somewhat limit the runway's achieving its full potential capacity during periods of heavy arrival traffic from the south; however, the proposed runway configuration offers significantly more capacity than that offered by the present runway configuration.

The relocation and establishment of NAVAIDS as discussed in the FAA involvement section are preliminary. Actual requirements must be determined during the detailed planning process. Memorandums of Agreement for reimbursement from the RAA to the FAA for relocation of facilities occasioned by airport development will be necessary.

The RAA must protect line-of-site (LOS) from the existing ATCT to the airport operations areas until it is relocated and then protect LOS from the new tower. Additionally, the RAA must submit all proposed construction designs for FAA approval relative to LOS and electromagnetic interference (EMI) protection for NAVAID and ATC facilities.

Safety and security aspects related to the closure of Crittenden Drive and access to the airport by the Louisville Fire Department's Engine Company Number One have been addressed fully in

the FEIS. This unit already has airport access to respond to fires. The RAA will grant the Fire Department controlled access through the airfield via the service/security road system to points south of the airport and Fern Valley Road. The Fire Department will certify annually all drivers who would potentially operate vehicles on the airport. A description of the annual training program and identification of all certified drivers will be included in the airport certification manual which must be approved annually by FAA. The RAA will also revise its security plan, based on LAIP, and obtain FAA approval. FAA's preliminary reviews indicate that airport security can be maintained with the planned Fire Department access.

VI. MAJOR IMPACTS AND MITIGATION MEASURES:

The major impacts of the project and the mitigation measures upon which federal approval is contingent are:

A. *Noise and Social:*

1. General:

As part of on-going dialogue between the FAA and the U.S. Environmental Protection Agency (EPA), the agencies agreed to conduct certain supplementary airport noise measurements for aircraft on a single event basis, as well as to provide additional technical discussion/analysis reflecting the noise levels generated by aircraft. While the EPA agreed the FAA has performed

adequate and proper noise analysis in conducting its environmental and airport noise studies, the FAA agreed to include those measurements and discussions in its environmental documentation for certain proposed projects, including the proposed Louisville Airport Improvement Project (which was already being developed at that time). The implementation of that agreement is reflected in the noise analysis sections of the FEIS (Section 5) and is fully supported by the EPA as meeting the requirements of the National Environmental Policy Act of 1969 (NEPA) and related implementing regulations and directives.

2. Impacts:

Approximately 16,132 people will be within the 1995 65 Ldn noise contour. As a result of mitigation measures, this figure will be reduced to 1,650 by 2003, which is the mandatory compliance deadline for conversion to Stage III aircraft. Most aircraft are expected to be in compliance by the initial 1999 compliance date.

In contrast, the "no action" alternative would result in 42,00 people in the 65 Ldn in 1995 and 3,445 by 2003.

a. The "no action" alternative (including the local land use program) involves:

* Relocation/demolition of approximately 1450 residences, affecting about 3500 persons; 15 churches and 60 businesses are also affected under the local land use program.

* Closing of two schools.

* Loss of funds for two community ministries.

* Potential revenue impact on Edgewood Fire District.

b. The proposed project will include the following additional impacts:

* Purchase of 150 residences in Edgewood.

* Acquisition of one church, 40 businesses and residences in the Tuberose community.

3. Mitigation:

Specific noise abatement measures were incorporated into the LAIP and these are already an integral part of the proposed project itself.

* UPS operation of only Stage III aircraft in Louisville by 1995 when the LAIP is fully completed. (See attached UPS commitment of Stage III aircraft.)

* Contra-flow aircraft operating procedure (i.e., landings from the south, take-offs to the south) beginning no earlier than 10 p.m. and ending no later than 7 a.m., weather and traffic permitting. Maximize operations occurring south of the airport over less congested areas.

In addition, the RAA has agreed to the following mitigation actions with or without federal assistance.

* Prohibition of routine late night maintenance runups, unless acceptable attenuation is provided. Implementation: Upon completion of the LAIP.

* A preferential runway use program, subject to FAA approval, instituting maximum

daytime utilization of Runways 17R and 17L for south departures.
Implementation: Upon completion of the LAIP.

* Straight-out, extended flight track departure procedures from each new runway, except in adverse weather conditions when a 15-degree turn from the west runway would be in effect.
Implementation: Upon completion of the LAIP.

* Soundproofing the Minor Lane Heights Elementary School between the time the project is approved and the opening of the first (east) runway.
Implementation: Start 1992: Complete 1993.

* A program of soundproofing at the University of Louisville Belknap Campus will be implemented as specified and agreed to in a letter from the RAA to the President of the University, dated August 17, 1989.
Implementation: As expeditiously as possible, but no later than 5 years of completion of the LAIP.

* Soundproofing of the residence at 2111 South Park Road. This site has been determined potentially eligible for the National Register and would be within the 65 Ldn noise curve in 2003, when the fleet is all Stage III.
Implementation: Upon completion of the LAIP.

* Acquisition and relocation of businesses and residences under the LAIP would be in

conformance with the Uniform Relocation Assistance and Real Property Policies Act of 1970 as implemented under 49 CFR Part 24.

* The property tax base for the Edgewood Volunteer Fire District will be affected in the short term. The RAA, city of Louisville and Jefferson County will cooperate in sustaining the Fire District until redevelopment has occurred sufficiently to replace lost revenues.

* Airport-related development associated with the airport expansion will result in increased traffic on Fern Valley Road and Grade Lane. The intersection will be rebuilt to accommodate this increase and establish access to the central portion of the airfield.

* The closing of Crittenden Drive will deny the Louisville Fire Department's Engine Company No. One to respond to fires south and east of the airport, primarily industrial sites. Therefore, the RAA will grant controlled access through the airfield via the service/security road system to points south of the airport and Fern Valley Road. The Louisville Fire Department would be required to certify on an annual basis all drivers who potentially would operate emergency vehicles on airport property. A description of the annual training program and the identity of all certified drivers would be made a part of the Airport Certification Manual, which must be approved annually by the FAA.

Additionally, the RAA adopted a voluntary sales program for the Edgewood Neighborhood, residential property within the 75 Ldn in the 1995 contour map. The adopted plan included 60 homes within the 75 Ldn and about 90 homes which are outside the 75 Ldn to avoid splitting blocks. This plan will be accomplished with federal assistance.

To complement the environmental processes for the proposed project, the RAA also commits to completing a Part 150 Noise Compatibility Study as soon as practical following approval of the LAIP. An *Airport Environs Land Use Compatibility Plan* has been prepared in conjunction with the city of Louisville and Jefferson County and incorporates many of the land use measures which must be in the Part 150 study. This study is being reveiwed locally. One strategy to be included in the Part 150 Study would be relocation of occupants of Holiday Mobile Home Park south of the Outer Loop.

B. *Air Quality*:

(1) Impacts:

The total regional pollutant burden will be lower because the pollutant burden associated with the regional roadways is expected to decline significantly due to improved antipollutant control devices and laws. The only pollutant expected to be worse in 1995 and 2010 is sulfur dioxide, and this is almost entirely identified with the regional roadway systems.

EPA has determined that the project is acceptable from an air quality standpoint. The Governor of the State of Kentucky has certified (FEIS, Appendix A-105) that there is reasonable assurance that the LAIP

will be located, designed, constructed and operated as to comply with applicable air and water quality standards.

(2) Mitigation:

The RAA has indicated that it will commit to reduce on airport sources of air pollution to the maximum extent practicable. During construction, omissions of fugitive dust associated with the construction and demolition activities will be minimized with proper pollution control measures. All asbestos materials, as well as other hazardous materials encountered (known and unknown) will be handled in accordance with all applicable regulations of the Jefferson County Air Pollution Control District, the State of Kentucky, and the Federal Government.

C. *Water Quality*:

(1) Major impacts:

Relocation of population through the land acquisition program will reduce the local flow of sanitary sewage, improve flood control south of the airport and permit greater control of deicing chemicals.

(2) Mitigation:

Hazardous substances or contaminated soils will be removed or contained in accordance with applicable laws. Abandoned underground storage tanks (UST) will be removed and the area tested for spilled materials. Contaminated soil, if present, will be removed, consistent with Federal, state and local laws. All clean up costs will be borne by the property own-

ers or, if necessary, the RAA. Any new storage facilities must meet EPA regulations for construction and installation to minimize leakage potential.

Sewers of the Louisville and Jefferson County Metropolitan Sewer District (MSD) will be extended to serve all new buildings to avoid new discharges of waste water to surface streams. Waste water generated by new facilities, which is not compatible for discharge to the MSD sewers, will be contained and properly disposed of at a certified facility.

Major drainage improvements will be designed for the airfield complex to minimize downstream flooding associated with existing and future levels of storm water runoff. New drainage facilities serving areas where aircraft are fueled or fuels are transferred will be built with fuel separators to capture spilled fuels. Wash water from aircraft washing facilities built as part of the improvement program will be diverted to the MSD sewers. Likewise, contaminated drainage from areas where deicing chemicals are used (runways, taxiways, and aircraft aprons) will be conveyed to detention basins for transport to the MSD sanitary or combined sewer system or evaporation in place. UPS has its own surface drainage system to divert contaminated storm drainage to MSD sanitary sewers.

Stringent measures will be taken to control soil erosion during the demolition and construction phases. Erosion control measures will include: diversion channels, vegetative buffers, channel protection, silt fences, and silt basins.

The Governor of the State of Kentucky has certified (FEIS, A-105) that there is reasonable assurance

that the LAIP will be located, designed, constructed and operated so as to comply with applicable air and water quality standards. The State of Kentucky has issued a Water Quality Certification (Section 401).

D. *Section 4(f) Properties*:

The construction of the LAIP will result in the taking of Grove Park, the adjoining Highland Park Community Center, and Lowell School. The RAA has agreed to replace "in kind" the facilities and services of Grove Park in a formal Memorandum of Understanding (FEIS, Appendix A-98). Mitigation for Lowell School has been included in a Memorandum of Agreement with FAA, RAA, Kentucky State Historic Preservation Office, and the Advisory Council on Historic Preservation.

Beginning in 1995 with the proposed LAIP, the following Section 4(f) properties would be affected by noise levels at or above 65Ldn:

A portion (20 buildings) of the University of Louisville Belknap Campus
The Adath Israel Cemetery
*Eastern Parkway
*Kentucky Fair and Exposition Center
*Park Boulevard Mini-Park
*Robin Park
*Wren Park
Churchill Park
Minoma Park
Twin Park

Eleven potential National Register sites in South Jefferson County (Five of these eleven potential Na-

tional Register sites are presently exposed to noise greater than 65Ldn.)

(*Indicates facilities currently exposed to noise levels at or above 65Ldn.)

There are eight fewer parks included in the 65 Ldn with the LAIP than the No Action alternative. The No Action alternative would also affect nineteen potential National Register sites in south Jefferson County, Lowell School, the potential National Register Districts, two National Register Districts, and two parkways.

At the times the noise analyses were conducted for the EA and the EIS, there was no legislation to require the airlines to convert from Stage 2 to the quieter Stage 3 aircraft. For this reason, 2010 was used as the time frame for the aircraft fleet operating at Louisville to be all Stage 3. This was based on an expected rate of conversion by phasing out older aircraft. Recent legislation was passed requiring aircraft over 75,000 lbs. to comply with Stage 3 noise levels after December 31, 1999 (or under specific waiver conditions, not later that December 31, 2003) in order to operate in the United States. Based on this requirement, as the percentage of Stage 3 aircraft increases, the 65Ldn contour will recede more quickly, and several properties will drop out of the 65Ldn no later than 2003; however, the following properties will be within the 65Ldn contour after the fleet is all Stage 3:

Adath Israel Cemetery
One potential National Register Site
on South Park Road
Kentucky Fair and Exposition Center

Park Boulevard Mini-Park
Twin Park

The RAA has committed to sound attenuate the site on South Park Road as well as the buildings on the University of Louisville campus. No mitigation is proposed for the cemetery, Eastern Parkway, or the remaining parks. The Louisville Parks Board passed a resolution that there was no "use" of these parks by the effects of the proposed project (Appendix A-22). Similarly, the State Fair Board passed a resolution that the noise impacts did not constitute a "use" of the Fairgrounds (Appendix A-24). The FAA has determined under its Section 4(f) obligations, that there was no "use" or "taking" of the six parks and the Kentucky Fair and Exposition Center. The RAA has committed to do a Part 150 study if the LAIP is approved. The potential historic sites would be evaluated in conjunction with that study, but no specific mitigation is proposed at this time.

The Falls of the Ohio National Wildlife Refuge, while well beyond the 65Ldn contour, will be expected to experience a slight increase in noise with the proposed project. The FAA considers the level and the amount of noise increase at that location (an increase of approximately 5Ldn above the current 50Ldn) to be insignificant.

The FAA concludes that, while there are parks and historic sites affected by noise from the proposed project, planning has been incorporated in the project to minimize or mitigate the impacts, that the impacts are less with the proposed project than without the project (with the exception of the Falls of the Ohio National Wildlife Refuge), and that there is no feasible and prudent alternative to the proposed LAIP

that would provide greater relief (except closing Standiford Field).

E. *WETLANDS.*

Approximately 19 acres of hardwood deciduous forest would be taken to construct the new west runway and taxiway. The FAA finds that there is no reasonable and prudent alternative to this impact, it having been minimized in the project design. However, under current policy for a two-for-one replacement, the replactment would be in-kind, off-site. A site of approximately 140 acres in Southwest Jefferson County has been identified as the preferred site by the Division of Water, Department of Fish and Wildlife Resources, the U. S. Army Corps of Engineers and the RAA. The mitigation plan includes the planting of trees to reestablish a hardwood, palustrine deciduous forest wetland. The restoration project will: (1) yield a wetland wildlife habitat that will enhance the water quality of nearby urban runoff and (2) provide unique recreational and educational opportunities for the population of the Louisville Metropolitan Area.

F. *SOLID WASTE.*

(1) LANDFILL

As discussed previously, because of the proximity of the landfill to Standiford Field, a special survey of bird activity of the area was conducted by the Animal Damage Control section of the Animal and Plant Health Inspection Service (APHIS-ADC) U. S. Department of Agriculture (USDA). The conclusion was that the airport/landfill relationship can remain compatible by continuing and enhancing proper bird control techniques. A permanent Wildlife Haz-

ard Management Task Force has been formed to provide a formal, continuing framework for addressing and resolving potential hazards associated with all bird and animal activities in and around the airport.

(2) HAZARDOUS SUBSTANCES

The RAA will acquire those properties containing hazardous waste sites either under threat of condemnation or through condemnation and, thus, would qualify as an "innocent landowner" under the definition in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq. An "innocent landowner" is not liable as owner of operator under Section 107(b)(3) because of the exempted third party contractual relationships in Section 101(35)(A)(11).

The RAA, as an "innocent landowner" will off-set or recover the costs of cleanup from other potentially responsible parties (PRPs). Most of the landowners of properties identified in the EIS as having hazardous waste sites are proceeding with remediation and will have effected the cleanup before the property is acquired by RAA. While it is estimated that the cost of cleanup of the hazardous waste site is well within the value of the properties, should cost exceed the value of the property, by law it will be borne by the property owner and/or the party or parties responsible for creating the contamination.

A number of actions were taken during the refinement of the LAIP which minimize the acquisition of potentially contaminated/hazardous waste sites into the project. First, the west runway was shifted 800 feet to the east from its originally proposed alignment. This action moved the construction and clear zones

away from the area of highest contamination at the Brown Wood Preserving site and adjoining properties. Also, the reconstruction of Crittenden Drive, which would require acquisition of a portion of the Brown property with the heaviest contamination, has been postponed until the property is cleaned up by the owner. These actions keep the RAA off the chain of title, limit RAA's exposure to liability, and provide the Brown Foundation time to take remedial action in the area.

Additionally, the shift of the west runway also avoided the displacement of the major industrial area to the west of Crittenden Drive. Two sites in this area were of particular concern. The first, United Catalyst, is a manufacturer of chemical catalysts used in steelmaking processes. The other, Reliance Universal, which was opened in the early 1940's, is involved in the manufacture of industrial coatings and resins. In the manufacturing process, toluene, xylene, keytones, acetone, and naptha type solvents and titanium oxide and chromium pigments are used. There are 25 to 30 solvent storage tanks on site. By shifting the west runway, both of these sites were avoided by the LAIP.

On the east side of the airfield, an access road, which eventually became the mid-field access road, was added to prevent the projected relocation of the DeVoe factory. This plant mixes raw materials to produce various types of paint. Several storage tanks for solvents and liquids used in the processes are located on site.

Other sites identified as having potential contamination were studied. None of these could be avoided. However, none of the identified sites is believed to

have cleanup costs greater than the resources available to the owner to remediate the property, as discussed in Section 5 of the EIS.

The detailed remediation plans for each site have yet to be developed. As mentioned above, most owners will have already accomplished the remediation when the RAA acquires the property. The remediation plans will comply with applicable Federal, state, and local requirements. Even though the detailed remedial actions have not been fully developed, sufficient investigation has been accomplished to identify the type of contaminants, a reasonable estimate of the extent of contamination, alternatives for remedial actions, and a reasonable estimate of the cost to remediate. It may be concluded that the remediation will not prevent the construction of the essential elements of the LAIP in a timely manner, though the reconstruction of Crittenden Drive will be delayed for at least 10 years. No project actions or remediation will be taken that would render less effective any appropriate alternative method of remediation unless and until the method pursued is approved and determined to be effective.

G. *CONSTRUCTION—SHORT TERM EFFECTS*

"Maintenance of Traffic" plan will be developed prior to construction to minimize inconvenience during construction. Other construction impacts (air, noise, and water pollution) will be minimized through strict adherence to pollution control provisions of FAA Advisory Circular 150/5370-10 *Standards for Specifying Construction of Airports* and the "Kentucky Department of Transportation Standard Specifications for Road and Bridge Construction." Measures for pollution control included in the construction plans and

specifications will be subject to review under the 401 water quality certification process and the states air quality permit process.

H. *MITIGATION MEASURES NOT ADOPTED*

Other mitigation measures that were considered but not adopted are as follows:

An agreement to restrict air traffic to the east runway during performances of "Shakespeare in the Park." This is being rejected as too restrictive on airport demands and capacity when it occurs during a peak traffic period. While this might be possible at times, FAA should not be locked into a unwise and premature commitment that would only be a significant problem later. Central Park is not within the 65 Ldn contour where cumulative noise is greatest. The FAA will continue to work with RAA and the community to provide additional relief whenever its possible and prudent.

Mitigation in the 65 to 70 Ldn contour in 1995 is not planned at the present time. Mitigation within the 70 to 75 Ldn contour was rejected because of the large areas and cost involved and the time required to implement it. FAA's position is that the noise contours will recede as more Stage III aircraft are put in use and that mitigation to correct short-term impacts is not considered prudent, cost efficient, or affordable. This would be reevaluated in the Part 150 study.

VI. *RELATED ISSUES*

A. Kentucky Supreme Court Decision of October 18, 1990.

This Section addresses the Kentucky Supreme Court ruling of October 18, 1990, in *Prestonia Area Neigh-*

borhod Association v. Abramson, voiding the urban renewal ordinances passed by the City of Louisville for the areas known as Highland Park, Prestonia, and Standiford.

The following documents related to this matter are included in the FEIS: (1) Kentucky Supreme Court Ruling of October 18, 1990; (2) Legal Memorandum from Wyatt, Tarrant & Combs dated October 23, 1990; (3) Ordinance No. 113, Series 1989, As Amended; and (4) Interlocal Cooperation Agreement dated May 1, 1989.

It is stated a number of times in the FEIS (and the EA before it) that the relocation of incompatible uses (homes, churches, neighborhood businesses) is not part of the LAIP and is not dependent or contingent upon the LAIP (e.g., refer to Section 1.5 of the FEIS). Additionally, it is indicated that the relocation of incompatible uses in the three urban renewal plan areas is being accomplished separately and independently from the RAA (the LAIP project sponsor). Likewise, the FEIS indicates that elimination of incompatible land uses within these three areas is consistent with the authority and objectives under Kentucky statutes (see Section 5.3.1.1).

The FAA has been advised by counsel on behalf of the airport sponsor that local governing bodies have the statutory authority to acquire property for urban renewal purposes (KRS Chapter 99), and the authority to acquire property necessary for establishing, operating, or expanding an airport including airport facilities (KRS Chapter 183). The city of Louisville, Jefferson County, and the RAA determined that much of the existing development surrounding the existing airport, as well as the proposed airport, was incom-

patible with current and future uses of the airport. They determined that it was to their mutual advantage to establish a land use program within the residential neighborhoods known as Highland Park, Prestonia, and Standiford. To accomplish this land use program, the City of Louisville, County of Jefferson, RAA, and the City of Louisville Public Properties Corporation (a separate agency designated to administratively manage and control the Land Use Program) entered into an Interlocal Cooperation Agreement, was to subject the property to airport servitudes in order to restrict the use and occupancy thereof to uses compatible with airport operations and to provide other airport improvements for airport use.

The actions undertaken under the Land Use Program, as defined in the Interlocal Cooperative Agreement, are:

1. Any and all of the local property within the project area having an incompatible use shall be acquired and cleared of all improvements having an incompatible use.

2. All of the acquired property shall be subjected to the airport servitudes.

3. The acquired property shall be either dedicated or conveyed to the authority for airport use or resold, subject to the airport servitudes, and the proceeds of such resale shall be applied to the additional costs and expenses of the land use program and any other airport improvements and the accomplishment thereby of the public purposes of the parties to the agreement.

4. Airport servitudes shall be acquired with respect to all other lots and lands in the project area by purchase or condemnation.

The City of Louisville and County of Jefferson sold revenue bonds and initiated the land use program independent of the LAIP being considered by RAA. While the two programs are complimentary of each other, neither is dependent upon the other.

Based upon the October 23, 1990, legal memorandum from Wyatt, Tarrant & Combs (bond counsel for city of Louisville), the FAA understands that the facts and circumstances are as follows:

1. The Land Use Program that was established pursuant to the Interlocal Cooperation Agreement and financed by the Bonds does not require or contemplate the use of the urban renewal laws or the city's urban agency to acquire property by purchase or condemnation. The Land Use Program was established based on finding by the city and the County that did not depend on the presence of blight. No action to acquire any of the numerous homes, churches, and businesses at a cost of approximately $50,000,000 has been taken under the urban renewal powers, authority, or law under KRS Chapter 99. All funding and, therefore, all actions to acquire property with such funding have been under KRS Chapter 183, "Aviation," and the $59,430,000 bond issue was also based on that statute.

2. The Interlocal Cooperation Agreement was signed by all four governmental parties and was approved by the Board of Aldermen of the City, the Fiscal Court of the County, the RAA Board, and the Board of Directors of the Public Properties Corporation. The Interlocal Cooperation Agreement was also approved as to legality by the City Law Department, the County Attorney, the RAA's general counsel, and the Public Properties Corporation's general counsel. The Interlocal Cooperation Agreement was also ap-

proved as to legality by the Attorney General of the Commonwealth pursuant to KRS 765.260.

3. The Supreme Court of Kentucky decision issued October 18, 1990, regarding the urban renewal plans of the City of Louisville and Jefferson County did not address the bond issue, the Interlocal Cooperation Agreement, or the land use program. The final paragraph on page 10 of the Kentucky Supreme Court opinion states:

> "The judgement of the trial court is reversed and Ordinances Nos. 114, 115, and 116, Series 1989, of the City of Louisville are hereby declared unconstitutional, invalid, and void. This matter is remanded to the trial court for entry of a judgment in accordance with the terms of this Opinion and for the purpose of issuing a permanent injunction to prevent Appellees from demolishing or destroying properties pursuant to the urban renewal plan and project described in each Ordinance, or the otherwise act under the power of the Ordinances hereby voided."

The FAA understands that the Ordinances Nos. 114, 115, 116 relate to urban renewal but legal authority for the bond issue, the Interlocal Cooperation Agreement, and the land use program has not been challenged and was not affected by the court's decision.

In light of the Kentucky Supreme Court decision, the FAA has been assured by the airport sponsor that the City of Louisville and Jefferson County, Kentucky, have the statutory authority to acquire property in the neighborhoods adjacent of Standiford Field under KRS 83.420; KRS 82.082; KRS 67.083; KRS 65.210 to KRS 65.300; KRS Chapter 183; the Interlocal Cooperation Agreement dated May 1, 1989 (between the

City of Louisville, Jefferson County, the RAA, and the City of Louisville Public Properties Corporation); Ordinance No. 3, Series 1989, of Jefferson County Fiscal Court; and Ordinance No. 113, Series 1989, of the City of Louisville. Therefore, it appears that there is sufficient legal authority to proceed, as described and analyzed in the FEIS, to eliminate incompatible land uses in the three areas without the authority voided by the Kentucky Supreme Court. The FAA has also been informed that this authority is, in fact, the authority used to fund the acquisition and relocation of all properties in these three areas to date. Through this authority, the City and County have already acquired 69% of all residential structures (total of 1,388) and 100% of all churches (14). Closing on contracts for the purchase of residential units have continued since the Supreme Court decision. Because the FEIS assumed such acquisitions would occur prior to operation of the new parallel runways, current circumstance substantially correspond to the forecasts and assumptions made in the FEIS. The FAA has been assured the assumptions and forecasts will be achieved.

As noted by the Court, its decision does not affect the proposed LAIP. The Kentucky Supreme Court states, on page two of its opinion, that ". . . the decision in this case does not determine whether or not Standiford Field may be expanded." The RAA's LAIP and the City/County land use program for eliminating incompatible land uses are separate, but complementary. The RAA was not a party to the law suit and is a separate, autonomous, local governmental entity. The FAA has been assured that RAA is empowered under KRS Chapter 183 to acquire property by contract, lease, purchase, gift, condemnation, or otherwise, for

public uses, including establishing, operating, or expanding airports and air navigation facilities, as needed for the proposed airport expansion project.

While the elimination of the incompatible land uses in these three areas is not part of the LAIP and is not dependent on it, nonetheless it is supported by the RAA, as a party to the Interlocal Cooperation Agreement, as a means of achieving compatible land uses in the airport area. The FAA supports efforts to achieve compatibility between the community land use and the local airport. Federal Aviation Regulations Part 150 provide the regulatory basis for this policy as it relates to airport noise. Eventually, the LAIP will require the RAA to acquire some of the land in each of the three areas, both for the runways and for relocation of airport-related businesses such as air cargo services, rental car agencies, and other airport-related uses (see Section 2.5 of the FEIS). Where the property in the three areas is needed for actual airport expansion, the RAA will purchase the property from the then owner in accordance with 49 CFR, Part 24, US Department of Transportation. "Relocation Assistance and Land Acquisition in Federally-Assisted Programs." Such commitments are made in the FEIS (see Section 1.5 of the FEIS) and will be reflected in any future grants for the project. These commitments remain viable after the Supreme Court decision.

The local land use program allows the RAA to acquire those areas needed for the airport uses described in the FEIS. It also provides for appropriate aviation servitudes to be placed on the remaining property, restricting that property and assuring its future uses are compatible with the airport environs.

The conditions articulated in Section 5.3.1.1 of the FEIS remain viable. The FEIS describes the impacts

of the LAIP in each of the categories required to be analyzed, and fully discloses and analyzes the impacts of the land acquisition program even though they are not part of the LAIP. The Kentucky Supreme Court's decision in the *Prestonia* case will not change any of those impacts attributable to the proposed project.

Therefore, based upon its review of the facts and circumstances as described above, the FAA finds that the RAA has provided its assurances that:

1. There is sufficient legal authority outside of the Kentucky urban renewal statute (KRS Chapter 99) to proceed with the relocation of incompatible land uses in the three areas around Standiford Field, as described in the FEIS.

2. The Louisville Airport Improvement Program and the Local Land Use Program (heretofore designated Urban Renewal Progam) actions and results, as described in the FEIS, will each be achieved and remain distinct but complementary programs.

3. Financial commitments of $50,000,000 each have been made by the City of Louisville (together with Jefferson County) and the State of Kentucky toward the LAIP. With these major commitments of financial resources along with the anticipated federal financial assistance through the Airport Improvement Program, provide reasonable assurance that RAA, the City of Louisville, and Jefferson County have the financial capability to complete the land use program currently underway.

4. The decision of the Kentucky Supreme Court in the *Prestonia* case does not cause any material change in any facts or conclusions in the FEIS, including those relating to (1) the number of properties which

will be acquired, (2) the timing of such acquisitions, (3) the number of dwelling units or people within any noise contour in any year, (4) the involvement of the RAA in property acquisition, or (5) the environmental and other impacts of the LAIP or any aspect of property acquisition.

Since the Kentucky Supreme Court decision did not determine whether or not Standiford Field may be expanded or affect the authority of RAA, and, in light of: (1) the authority of RAA to acquire property and develop, operate, and maintain an airport; (2) RAA's will and commitment to take actions and achieve the results described and analyzed in the EA/EIS; and (3) the availability of adequate funds to RAA to accomplish those actions, the FAA believes that may rely on the assurances made by the RAA.

VIII. *SPECIAL FINDINGS.*

A. *The project is reasonably consistent with existing plans of public agencies for development of the area.*

The proposal was cleared by the Kentucky State Clearinghouse by letter of March 27, 1989 (see FEIS, Appendix Page A-1) stating "review of this proposal indicates there are no identifiable conflicts with any state or local plan, goal or objective. Therefore, the State Clearinghouse recommends this project be approved for assistance by the cognizant federal agency."

B. *Fair consideration has been given to the interest of communities in or near the project location.*

All communities have had the following opportunities to express their views:

Public Workshops:	10/20/88, 1/26/89, 3/16/89
Pro scoping meeting:	10/20/88
Public Hearings (3):	8/31/89—Written comments were received until 9/18/89.
Notice of Intent to Prepare DEIS:	1/26/90
DEIS Availability Notice:	5/25/90

Comments received during this process were available for review or are contained with the DEIS/FEIS documents. All comments were cor sidered.

C. *Appropriate action has been or will be taken to restrict to the extent reasonable, the use of land in the vicinity of the airport to purposes compatible with airport operations.*

The Airport Sponsor, Regional Airport Authority, is required in every grant application to furnish a statement on compatible land use, and each grant issued to RAA contains an assurance on compatible land use. RAA has agreed to an effective noise mitigation program and will supplement its effort by undertaking an FAR Part 150 noise compatibility planning study which will involve all jurisdictions and include additional land use controls by surrounding communities to control future noncompatible development. RAA does not have the authority to control land use and must rely on surrounding communities to control noncompatible development. Hence, their participation and cooperation is essential to ensuring that future airport noise compatibility programs are implemented.

D. *Appropriate air and water quality certificates will be obtained for the project in accordance with established procedures.*

The Governor of Kentucky has certified by letter dated September 12, 1990, that "there is reasonable assurance that the expansion of Standiford Field including the development of two new runways, as proposed by the Regional Airport Authority of Louisville and Jefferson County, will be located, designed, constructed and operated so as to comply with applicable air and water quality standards." See page A-105 of FEIS appendix.

E. *There is no feasible and prudent alternative to the location of the airport and runways and all reasonable steps have been taken to minimize adverse effects.*

Pursuant to Section 509(b)(5) of the Airport and Airway Improvement Act of 1982, this Record of Decision highlights the FAA's consideration of alternatives and decision-making considerations as well as mitigation measures related to the location of the airport and runways.

F. *There is no feasible and prudent alternative to the use of lands subject to Section 4(f) and all possible planning to minimize harm to such lands resulting from such use has been included.*

"Use" of Section 4(f) land is limited to:

Grove Park and Highland Park Community Center; Lowell School; and the residence at 2111 South Park Road.

The FAA has effected a Memorandum of Agreement (MOA) with the ACHP stipulating the details asso-

ciated with mitigation efforts identified for Lowell School and the residence at 2111 South Park Road (see FEIS Appendix A-97). The FAA has determined the mitigation measures agreed to between the RAA and local authorities for Grove Park and the Highland Park Community Center (see Appendix A-103), reduce adverse effects of the project on these properties to the maximum extent reasonably possible to achieve.

K. *Hazardous Waste*

Since the project requires the acquisition or use of land that includes eight major and several minor hazardous waste sites, the RAA will complete the ongoing remedial investigations, develop a remedial plan, and clean up these sites pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq. The estimated costs of clean-up will be obtained by the RAA from the current owners of the respective sites either [1] through purchase under threat of condemnation or through condemnation. Any additional costs of clean-up will be recovered from the current [2] or former property owners or other parties potentially responsible under Section 107 of CERCLA. Hazardous substances or contaminated soils at those sites will be removed or contained in accordance with applicable federal, state, and local laws.

IX. *DECISION*:

Having carefully considered the air transportation system and airport capacity and the aviation safety and operation objectives of the proposed project in the light of the various aeronautical factors and

judgments presented, as well as being properly advised as to the anticipated environmental impacts of the proposal, under the authority of the Administrator delegated to me, I find that the project is reasonably supported and should be processed for FAA approval for federal assistance and the subsequent procedures involving grant application, grant offer and grant acceptance. This decision, as well as subsequent approval of the project for federal assistance, constitutes an order of the Administrator reviewable in the Circuit Court of Appeals in accordance with Section 1006 of the Federal Aviation Act of 1958, as amended.

APPROVED:

/s/ Garland P. Castleberry — 1/7/91
GARLAND P. CASTLEBERRY — Date
Regional Administrator
Southern Region, Federal Aviation Administration
U.S. Department of Transportation

Attachment

ATTACHMENT

LIST OF REPORTS FOR THE RECORD

Evaluation of Airport Facility Needs at Standiford Field, June 1988

Environmental Assessment for the Louisville Airport Improvement Program (EA/AIP), December 1989

Final Environmental Impact Statement, November 1990

Final Report on Airport Master Plan Site Selection for a New Airport, 1975, Louisville and Jefferson County Air Board

Technical Report: Aviation Activity Forecasts for Standiford Field, Louisville, Kentucky, 1978, Peat Marwick Mitchell and Company

Technical Report: Analysis of Airfield Capacity and Delays on Standiford Field, Louisville, Kentucky, 1978, Peat Marwick Mitchell and Company

Technical Report: Passenger Terminal Platform Planning Criteria for Standiford Field, Louisville, Kentucky, 1978, Peat Marwick Mitchell and Company

Technical Report: Alternate Terminal Platform Site Analysis or Standiford Field, Louisville, Kentucky, 1978, Peat Marwick Micthell and Company

Summary Report: New Airside Building for Standiford Field, Louisville, Kentucky, 1983, Peat Marwick Mitchell and Company

Technical Report: Airfield Capacity Study—Standiford Field, 1985, Peat Marwick Mitchell and Company

Final Letter Report: Preliminary Analysis of Potential New Runway, Standiford Field, 1987, Peat Marwick Company

Airline Traffic Analysis, 1987, Peat Marwick and Main repared as part of 1987 Series A Bond Issue)

Technical Report No. 1—*Forecast of Aviation Activities*

Technical Report No. 2—*Evaluation of Alternatives*

Technical Report No. 3—*Selection of Preferred Alternative*

Final Report—*Evalaution of Airport Facility Needs at Standiford Field*

Working Paper No. 1—*Airport Improvement Alternatives*

Working Papers No. 2 and 3—*Effects and Costs of Airport Improvement Alternatives*

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